89-225

Supreme Court, U.S.
FILED
JUL 24 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

MARY ROSENTHAL, BERNARD L. MILLER
YETTA MILLER, and the Estates of
SAMUEL SCHWARTZ & ANNA SCHWARTZ
PETITIONERS,
Acting Pro Se

VS.

JEROME J. VERLIN, ESQUIRE
RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

MARY ROSENTHAL
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QUESTIONS PRESENTED

A. DOES THE FOURTEENTH AMENDMENT PRECLUDE CITIZENS' RIGHTS FOR LEGAL REPRESENTATION IN LEGAL MALPRACTICE SUITS.

B. WAS THERE AN ABUSE OF DISCRETION BY THE COMMON PLEAS COURT OF PHILA. IN GRANTING RESPONDENT, ATTORNEY JEROME VERLIN, A MOTION FOR SUMMARY JUDGMENT AND A DENIAL TO PETITIONERS' PETITION FOR RECONSIDERATION, WITHOUT A HEARING OR JURY TRIAL.

C. DID THE SUPERIOR COURT OF PA. COMMIT AN ERROR OF LAW IN GRANTING THE RESPONDENT'S MOTION TO DISMISS THE PETITIONERS' APPEAL FOR FAILURE TO COMPLY WITH R.A.P. 903(A).

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B. WAS THERE AN ABUSE OF DISCRETION BY THE COMMON PLEAS COURT OF PHILA. IN GRANTING RESPONDENT, ATTORNEY JEROME VERLIN, A MOTION FOR SUMMARY JUDGMENT AND A DENIAL TO PETITIONERS' PETITION FOR RECONSIDERATION, WITHOUT A HEARING OR JURY TRIAL. (i)

C. DID THE SUPERIOR COURT OF PA. COMMIT AN ERROR OF LAW IN GRANTING THE RESPONDENT'S MOTION TO DISMISS THE PETITIONERS' APPEAL FOR FAILURE TO COMPLY WITH R.A.P. 903(A)

THE PETITIONER/PLAINTIFFS . . . . . .(i)

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History of Case

Building and contents of Pocono Lake Diner, Pocono Lake, PA, owned and operated by the above Petitioners and Daniel Rosenthal was completely destroyed by fire on August 20, 1963.

Daniel Rosenthal was indicted for fraudulently obtaining fire insurance as sole owner, by the Pennsylvania Insurance Commission. Exhibit (D-1)

Action No. 314 May Term 64 commenced by a Praecipe for Summons in Assumpsit on December 15, 1963 by the petitioners/ plaintiffs against the Fire Insurance Companies in the Monroe County Court, was dismissed by the Court, in accordance with Pennsylvania R.J.A No. 1901 (Termination of Inactive Cases) on June 9, 1981.

Jerome Verlin, Esq. entered his appearance for petitioners/plaintiffs on October 24, 1975, approximately one year after being retained.

An Appeal from the Order of the Court of Common Pleas Monroe County to the Superior Court and also to the Supreme Court in Philadelphia was Denied.

Upon the Supreme Court's ruling Denying a Petition for Reconsideration on March 5, 1984 on the Monroe County issue, the petitioners, pro se, instituted a malpractice suit against the respondent/defendant, Jerome Verlin, Esquire, on February 21, 1986 by filing a Complaint in the Common Pleas Court of Philadelphia, No.3920 February Term 86, - requesting A Jury Trial.

On March 17, 1986, respondent/defendant filed an Answer to petitioners/plaintiffs Complaint with New Matter upon which the petitioner/plaintiffs filed their Response. On May 15, 1986, the respondent/defendant submitted eighty five (85) Interrogatories to the petitioners/plaintiffs, which the plaintiffs timely answered. On July 2, 1986, petitioner/plaintiff Mary Rosenthal was

BEST AVAILABLE COPY

granted a Motion of Protective Order prohibiting the taking of depositions until services of an attorney could be obtained. Mary Rosenthal, petitioner/plaintiff's Depositions were taken at a later date though unable to procure legal representation. Motion for a Summary Judgement was filed by the respondent/defendant. On September 8, 1987, petitioner/plaintiffs filed Opposition to respondent/defendant's Motion for a Summary Judgment. On January 20, 1988, Judge Samuel Lehrer of the Court of Commons Pleas, Ordered and Decreed the Summary Judgment, in favor of respondent/defendant Jerome Verlin, Esq. Petitioners/plaintiffs proceeded to file a Petition for Reconsideration with New Matter and Supportable evidence of fraud and deceit perpetrated by the respondent/defendant upon the petitioners/plaintiffs. On March 18, 1988, Petition for Reconsideration was Denied by Judge Samuel Lehrer.

On April 18, 1988, petitioners filed Notice of Appeal (No. 3920 February Term 88) with the Superior Court of Pennsylvania in Philadelphia. On May 3, 1988, Motion to Dismiss Appeal was filed by respondent and was Granted for failure to comply with PA. R.A.P. 903(a). On June 8, 1988, petitioners filed a Petition for Reconsideration to Dismiss Appellants' Appeal. Petitioners/Appellants Petition for Reconsideration was Denied in the Superior Court on June 10, 1988 and in the Supreme Court on April 27, 1989.

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF PENNSYLVANIA

Petitioners, Mary Rosenthal, Bernard L. Miller, Yetta Miller, and the Estates of Samuel and Anna Schwartz, respectfully prays that a Writ of Certiorari Issue to review the Constitutional Rights to Hearing and Trial By Jury, the Summary Judgement and Opinion of the Common Pleas Court, entered January 20, 1988, and the Denial for Appeal for failure to comply with Penna. RAP 963(a) on May 25, 1988.

I.

OPINION BELOW

The opinion of the Court of Common Pleas (Feb. Term 86 - No. 3920.) No opinion issued by Syperior Court of Pa. (May Term 88 - No. 1278) of Pa. Supreme Court (646 ED. Allocatur Docket 88.)

II.

JURISDICTION

The Order was endorsed on the Petition for Reconsideration, filed in the Supreme Court of Pennsylvania, Eastern District on April 27, 1989. The jurisdiction of this court is invoked pursuant to 28 U.S.C. No. 1257 (3).

III.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment of the Constitution of the United States ratified in 1986:

> Creates or at least recognizes for the time a citizenship of the United States, as distinct from that of the states; forbids the making or enforcement by any state of any law abridging the privileges and immunities of the citizens of the United States; and secures all "persons" against any state action which

results in either deprivation of life, liberty or property without due process of law, or in denial of the equal protection of the laws.

The Seventh Amendment of the Constitution of United States states that:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right to a trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law. This constitutional right of trial by jury is preserved by Federal Rule Civil Procedure No. 38.
>
> (Emphasis added to pertinent sections)

IV.

STATEMENT OF FACTS

(1) THE FOURTEENTH AMENDMENT of the Constitution of the United States ratified in 1986:

> Creates or at least recognizes for the time citizenship of the United States, as distinct from that of the states; forbids the making or enforcement by any state of any law abridging the privileges and immunities of the citizens of the United States; and secures all "persons" against any state action which results in either deprivation of life, liberty or property without due process of law, or in denial of the equal protection of the laws.

Denial of the right to effective aid of legal counsel where discrimination prevails is a denial of due process under the 14th Amendment.

By virtue of not having an attorney there is prejudice in litigations, especially in a legal malpractice suit.

The Petitioners in this instant action were deprived of their Constitutional rights as a result of their charges against their

former attorney, a member of the Phila. Bar Association. The Code Of Ethics that "high quality services should be available to all" is but a myth and discriminatory when applied to legal malpractice suits.

A study made by the American Bar Association states:

> "Lawyers will not appear to cooperate in disciplinary proceedings against other lawyers but instead will exert their influence to stymie the proceedings."

Had the petitioners had legal representation or legal guidance which they desperately sought throughout their entire malpractice procedure, this instant action would not have been necessary.

As not to belie the statement that the petitioners asserted their best efforts to retain counsel from the onset of their legal malpractice suit, the petitioners list the attorneys, agencies and law clinics contacted. Reasons given for refusing legal services were: case too time consuming,

conflict of interest, and legal malpractice suits not permitted by law clinics.

A partial listing of contacts made between March 6, 1984 and July 10, 1989. is available.

The Phila. Bar Association Lawyers' Referral Services thoroughly reviewed the petitioner's Malpractice Complaint and agreed the Petitioner's claim was just, tried but were unable to assist the petitioners in obtaining counsel. Exhibit (D-2) Exhausting all resources in locating an attorney, Mr. Klitsch, of Community Legal Service offered three suggestions to the petitioner, Mary Rosenthal--seek an attorney on the outskirts of Phila., act pro se or drop the charges.

A trip to the Pa. Bar Assoc. in Harrisburg, Pa. seeking assistance was futile but the petitioners were given a Malpractice Attorneys Listing. The Petitioners had high hopes when they left Harrisburg, but the list turned out to be useless and they stopped making calls when one of the legal attorneys

gave them some "free advice" - to "give up the search, as no out-of-town attorney in his right mind would dare venture into a Philadelphia Courtroom and try to prosecute a Phila. attorney."

Fully realizing that the respondent being a member of the legal profession creates a discomfort for any one of his colleagues to challenge his integrity, but in the name of Justice what does the average person do, who is in need of legal assistance to understand our complex laws.

Having been denied due process of the law due to the discriminating actions of the legal society, it is only fair and proper that the petitioners are given their rights under the 14th Amendment of our Constitution by having their case remanded to the courts to be tried with legal assistance.

(2) THE SEVENTH AMENDMENT of the Constitution of United States states that

> in suits at common law, where the value in controversy shall exceed twenty dollars, the right to a trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law. This constitutional right of trial by jury is preserved by Federal Rule Civil Procedure No. 38.

The right to a jury trial which the Seventh Amendment constitutionally guarantees has been denied to the petitioners as there was a clear abuse of discretion by Judge Lehrer by not viewing all evidence and denying the petitioners their rights to a jury trial.

Action No. 3920 February Term Common Pleas Court of Phila. Complaint filed by Petitioners/Plaintiffs vs. Respondent/

Defendant with Jury Trial Demand--no Hearing or Jury Trial.

Action No. 1278 Phila. Term 88 Superior Court of Pa. Order to Dismiss Appellants Appeal - no Hearing or Jury Trial.

For twenty-five years from the onset of the first Complaint filed against the Fire Insurance Companies, attorneys on record, involved in the Insurance Claims and Malpractice suits have scrupulously denied the petitioners' rights, to their "one day in court."

Had the Court allowed the Petitioners/Plaintiffs to be heard, in the Motion for Summary Judgment procedure, the Petitioners would have confronted the Respondant with one of his insidious lies in his Motion for Summary Judgement which stated:

> "that the Settlement Agreement signed by Mary Rosenthal for the Plaintiffs in the March Term 1964, Phila. County action provides a release of Verlin from all claims by the plaintiffs,"

is a deplorable claim for a man in Mr. Verlin's position.

For the record, Mary Rosenthal, Yetta Miller and Bernard Miller were all present when they were all forced to sign the Settlement Sheet making Jerome Verlin guilty of expunging Yetta Miller's and Bernard Miller's names. Exhibit (D-3,4) Apparently, the Respondent didn't want any witnesses to the signing of the Settlement Sheet Release which was signed under duress and could have been set aside as null and void, especially if the Court was made aware of the fraudulent transaction the signing of the document involved.

The petitioners were called to Attorney Verlin's office on December 31, 1975, to prepare for their long awaited trial set by Judge Marshall No. 458 County Court Exhibit (D-5) but instead Mr. Verlin insisted upon an out of court settlement. He also insisted that the

petitioners settle their approximate eleven (11) year old insurance claim for $27,000 on their $65,000 claim but the petitioners refused and wanted the case to go to Court. Mr. Verlin became extremely nasty with the petitioners and threatened them that if they didn't make the $27,000 settlement, he was going to withdraw from the Phila. suit as well as the Monroe County action and would personally see to it that no other attorney would represent them. Being in a state of bewilderment and shocked at the settlement figure and especially at Mr. Verlin's attitude, the petitioners had no choice but gave in. Mr. Verlin faithfully promised at that time, that if the Petitioners would agree to the $27,00000 in the Phila. suit, he would take immediate action in the Monroe County Court suit so that the petitioners would get the balance of their money due them from their suit of $120,000. What

the petitioners had no way of knowing, at that time, was that their attorney, Jerome Verlin was conning them into signing the Settlement Release Statement as there no longer was case No. 458 on record. He and his co-counsel, Anthony Novosistis (who was the petitioners' previous attorney and was discharged for his unethical practice) had

> "Settled, Discontinued and Ended action No. 458 on September 26, 1975, approximately 65 days prior to the forced $27,000 settlement!!" Exhibit (D-6)

Mr. Verlin, also raises the issue in his Motion for Summary Judgment that:

> "the present action apparently asserts acts of negligence on Verlin's part as to both the March Term 1964 - Phila. County (Complaint (7-11) and Monroe County (Complaint 12,16). However the signed release, releases Verlin from liability in these matters. The language of the signed release brings clear and unambiguous, there is no dispute as to any material fact - Verlin is entitled to judgement as a matter of law."

Had the courts checked the records and given the petitioners their "day in court" before the Summary Judgment was issued, they would have discovered that there was a fraudulent insurance policy written in the Petitioners' names, insuring a farm, farm equipment and cattle with an attached settlement sheet with all the petitioners' names forged. Exhibit (D-7, 8 and 9) The petitioners never owned a farm, farm equipment or cattle. The fire date on this policy was Nov. 2, 1975 - 38 days after action No. 458 was withdrawn from Court and one month prior to the signing of the Settlement Sheet Release. For Mr. Verlin to try to exonerate himself from negligence charges for the Monroe County suit is absolutely ridiculous. Petitioners retained Mr. Verlin on or about Oct. 15, 1974 and was assured at that time of his immediate services for the much neglected suit in Monroe County,

but he deceived the petitioners into thinking that their legal problems were being taken care of. His name didn't appear on record until 10/27/75 approximately 35 days before the Settlement Sheet Release. For Mr. Verlin, to exonerate himself for damages for his negligence in the Monroe County No. 314 May Term 64 suit is ridiculous as he did nothing but set a date and postpone it for a hearing which was the only transaction before signing of the Release for action No. 458 Phila. County.

As bizarre as this may sound to the Court, the scheme to defraud the petitioners out of their insurance money was cleverly devised and was accomplished, by keeping the Petitioners and their suits from being heard. Proof being, the Monroe County Court's Opinion No. 314 May Term 64, when the case was Dismissed for Inactivity stated:

"that the whole procedural history of the case, belies the contention of the Plaintiffs, that they have attempted in good faith to bring this matter to conclusion and that we feel that this case should continue to join former President Johnson and the Connie Mack Stadium, home of the 1964 Phillies, in a state of benign repose."

Mission finally accomplished!! - the attorneys finally succeeded in having the petitioners seventeen year old case, by the process of the law, do their work.

Accusations involving the fire insurance money cannot be inferred as the Petitioners did not have the means to investigate the matter. Mr. Verlin was to have recieved 1/3 of $120,000 plus interest from the Monroe County suit No. 314 May Tern 64 which he continously claimed, the case had excellent merits, otherwise he would not be handling it, as he was in business to make money. For Mr. Verlin to allow the case to lay dormant until the case was dismissed is beyond anyone's comprehension.

(3) RULE 903 - TIME TO APPEAL

> General rule - Except as otherwise perscribed by this rule, the Notice of appeal required by Rule 902 (Manner of taking appeal) shall be filed within 30 days after entry of the order from which the appeal is taken.

The Petitioners' Appeal No. 1278 in the Superior Court was Dismissed on grounds for failure to comply with Pa. R.A.P. 903 (a) which the Petitioners believe the Court erred in its discretion.

Notice of the Appeal was filed April 18, 1988 which was within the 30 day period for Order Denying the Reconsideration Petition in the Common Pleas Court on March 25, 1988.

Trying to follow explicitly the R.A.P. Rulings, petitioners did not file a Notice of Appeal in the Superior Court from the 1/20/88 Order of Summary Judgment, as the petitioners tried to comply with Rule R.A.P. 1701 (b)(3) which states:

> Effective January 31, 1987 Pa. R.A.P. 1701 (b)(3) was amended to place upon the petitioner or appellant the duty to file a praecipe with the Prothonatary of the Appellate Court to strike the petition for review or notice of appeal if the trial court or other government unit has timely entered an order granting reconsideration. Should the petition or appellant fail to do so, any other party may file the praecipe.
>
> The Rule change recognizes that the petitioner or appellant should, in the first instance, have the duty of removing the inoperative matter from the appelate Court's docket. The rule change also implicitly recognizes that the petitioner or appellate must praecipe to strike the inoperative petition for review or notice of appeal and not stay the proceedings in the appellate court pending disposition of proceedings or reconsideration in the trial court or other government unit. Rather the petitioner or appellant must file a new petition for review or notice of appeal if the petitioner or appellant is unsuccessful on reconsideration before the trial court or other govenment unit.

Filing the Notice of Appeal from the Order entered on March 18, 1988 which had been prepared by the petitioner within 30 days from the Summary Judgment ruling, would not have created an extra burden upon the petitioner to file, but the petitioner in her endeavor was

trying to abide by R.A.P. 1701 (b)(3) ruling and believing that the Notice of Appeal would be inoperative if filed, therefore did not file the Notice of Appeal until the final determination of the Reconsideration was filed. Considering the new R.A.P. 1701 ruling which states that the appellants have the duty of removing the inoperative matter, referring to the Notice of Appeal, if docketed while proceedings in the lower court are pending, the petitioner's interpretation was that the Superior Court would not consider an Appeal until their Reconsideration was finalized in the lower court.

The appellants also acted in accordance with Rule 311 (a) which states:

> Except as otherwise prescribed by general law, an appeal may be taken as a right from:
>
> Affecting Judgments -
>
> An order opening or refusing to open, vacate or striking off a judgment, If orders opening, vacating or striking off a judgment are sought in the alternative, no appeal may be filed until the court has disposed of each claim for relief.

Necessity of Final Determination

There can be no appeal until there has been a judgment or final order in the court from which the appeal is taken. Superior Court Rules. Rules of Practice, Rule 4, Subdivision a(2).

To be Final and thus Appealable

order must end litigation, dispose of the entire case or effectively put litigant out of court. In determining what constitutes a final order, Commonwealth must look beyond technical effect of adjudication and consider its practical ramifications.

The petitioners filed in the Lower Court a Petition for Reconsideration of Plaintiffs' Petition for Opposing the Defendant's Motion for Summary Judgment, presenting detailed information of fraud with court records to substantiate the claims, discovered by the petitioner, which was not brought to the attention of the court. Interpreting the complex law as a layman, the final order and decree was issued when the Petitioners petition for Reconsideration was denied and docketed on March 25, 1988 at which time the Order and Decree became appealable within 30 days.

Whether the new amended rulings of R.A.P. No. 903 or Rule No. 1701 which states that:

> "there can be no appeal until right of action is complete and no statute can run before that time"

the petitioners were within their Jurisdictional and Constitutional rights in having their action heard in Court.

V.

REASONS FOR GRANTING THE WRIT

> "Trial Court, in addition to requiring party who moves to set aside enrolled judgment to prove that he is acting in good faith and with diligence and that he has meritorious defense, should also require showing of such facts and circūmstances as will establish fraud, mistake or irregularity allegedly used to obtain judgment sought to be vacated."
>
> (Maryland Rules Rule 625a - Berwyn Fuel & Feed Co. v. Kolb 240 A2d23d)

The petitioners believe that they have presented sufficient criteria in their Writ of Certiorari to open the cause of their action.

VI.

CONCLUSION

When one cannot resolve their problems amicably with their contender, one pursues the democratic way of turning to the courts for aid.

It is understood that court cases may become problematic but giving each one a "fighting chance", so that others may hear the controversies and give their unbiased opinion, is the essence of a true democracy in our Courts, but to be deprived of that privelege by the Courts through the manipulation of men in the legal profession, is detrimental to the well being of the people at large.

For twenty-five years the petitioners waged a battle in the Courts of Penna., as a result of a fire loss insurance claim of $120,000. Throughout the entire period of the Petitioners claims, although the Cases did appear on the Docket Entries in the Phila. and Monroe County Courts, by the scrupulous

machination of the Petitioners' attorneys, the cases never reached the "eyes or ears" of the court.

The Petitioners pray that your Honorable Court will remand the Summary Judgment back to the Court to be heard, so that the years of struggling, and dreaming that JUSTICE in our Courts will prevail will not have been in vain!

Respectfully submitted

Mary Rosenthal
c/o Kalmus
24 Chelmsford Drive
Trenton, N.J. 08618

VII.

APPENDIX

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No. 3920 - Feb. Term 1986

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C. ORDERS

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E.D. Allocatur Docket 88

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Proth. D. Szewczak

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Judge S. Lehrer

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R6848 No. 0646 E.D ALLOCATUR DOCKET1988 No0646

TITLE OF CASE

MARY ROSENTHAL, BERNARD L. MILLER,
YETTA MILLER AND THE ESTATES OF SAMUEL
AND ANNA SCHWARTZ,

Petitioners

v.

JEROME J. VERLIN, ESQUIRE

COURT BELOW: C.P. - Civil Division

COUNTY: Philadelphia

No. Below: 3920 February Term, 1986

Date	Filings-Proceedings
7/11/88	PAA from Superior Court at No. 1278 Philadelphia, 1988 (dated 5/25/88), Filed.[Petition for Recon/ sideration Denied 6/10/88].
7/25/88	BIO, Filed.
8/1/88	"Response of Appellant Mary Rosenthal to Appellee's Brief in Opposition to Petition for

R6848 NO. 0646 - CONTINUED

Allowance of Appeal", Filed.

12/28/88 ORDER: Petition Denied. Per Curiam.

1/4/89 Above Order entered and all parties advised. [PAA]

1/11/89 Petition for Reconsideration, Filed.

1/17/89 Response to Petition for Reconsideration, Filed.

1/23/89 "Answer to Appellee's Response to Appellants Petition for Reconsideration of Denial of Petition for Allowance of Appeal", Filed.

4/27/89 ORDER: Petition denied. Per Curiam. (Reconsideration)

5/2/89 COUNSEL ADVISED OF ABOVE ORDER. PETITIONER ADVISED OF ABOVE ORDER.

5/23/89 NOTICE SHEETS EXIT TO LOWER COURTS.

06/26/89 SUPERIOR COURT OF PENNSYLVANIA

1217 OFFICIAL DOCKET

DOCKET NO. 01278PHL88

FULL CAPTION

001T MARY ROSENTHAL, BERNARD L. MILLER,
001T YETTA MILLER AND THE ESTATES OF
001T SAMUEL SCHWARTZ AND ANNA SCHWARTZ

V

002E JEROME J. VERLIN, ESQUIRE

COUNSEL		TITLE	FOR
X3186	MARY ROSENTHAL P O BOX 2756 4665 WEYMOUTH ST PHILADELPHIA, PA 19120 215-	PRO SE	001T
18256	THOMAS J ZIOMEK 1234 MARKET ST 17TH FLOOR PHILADELPHIA, PA 19110 215-854-7076		002E

CONSOLIDATED DOCKET NUMBER

BACKGROUND DATA

LOWER COURT RECORDS

CATEGORY:	CV
COURT NAME:	CIVIL
COUNTY	PHILADELPHIA

DOCKET NO. 01278 PHL 88 CONTINUED

JURDICIAL DIST. 01

CASE TYPE/CHARGES: ASSUMPSIT & TRESPASS

LOWER COURT CHARGES:

JUDGE(S) LEHRER, S

DISPOSITION TYPE: ORDER ENTERED

DISPOSITION DATE: 03/18/88

APPEAL FILE DATE: 04/18/88

DISPOSITION ENTERED:

LOWER CRT DOCKET NO: 3920 FEBRUARY 1986

OFFENSE TRACKING NO:

STATUS INFORMATION

DOCKET ENTRIES FOR

04/26/88 NOTICE OF APPEAL

04/28/88 DOCKETING STATEMENT EXITED

05/03/88 MOTION TO DISMISS APPEAL 002E

05/12/88 DOCKETING STATEMENT RECEIVED

05/12/88 DOCKETING STATEMENT DUE

05/17/88 ANSWER TO MOTION TO QUASH APPEAL 001T

DOCKET NO. 01278 PHL 88 CONTINUED

05/19/88	LOWER COURT RECORD RECEIVED 05/28/88 LOWER COURT RECORD DUE	
05/25/88	MOTION TO QUASH APPEAL GRANTED CERT COPY OF ORD W/REC TO L/C -7/1/88.	002E
05/25/88	MOTION FOR ORAL ARGUMENT OF MOTION TO QUASH APPEAL	001T
06/08/88	MOT FOR RECONSIDERATN OF DISMISSAL	001T
06/10/88	MOT EXT OF TIME TO FILE BRIEFS 1ST	001T
06/10/88	MOTION FOR RECONSIDERATION DENIED *AS MOOT*	001T
06/10/88	MOT FOR EXT OF TM TO FL BRF DENIED	001T
06/15/88	MOTION FOR ORAL ARGUMENT DENIED	001T
07/11/88	MOT FR ALLOW OF APPEAL IN SUP CRT	001T

86 FEB. 03920 CIVIL ACTION DT-04/18/88

ROSENTHAL, ETAL*VERLIN

****

POOOO1-MARY ROSENTHAL

ADDR-NO ADDRESS GIVEN

DOOOO1-JEROME J. VERLIN

ADDR-NO ADDRESS GIVEN

ATTY-018256 THOMAS J ZIOMEK

****

RULE 150 -- READY DATE 02/23/87

02/21/86 01:40P PLAINT/REP-SELF

PROTHY $169.50

AMOUNT AT ISSUE MORE THAN

$20,000.00

02/21/86 01:40P COMPLAINT WITH NOTICE TO

DEFEND, WITHIN TWENTY (20)

DAYS AFTER SERVICE, IN

ACCORDANCE WITH RULE 1018.1

FILED.

JURY TRIAL DEMANDED, FEE PAID

$72.00

(ENTERED 02-28-86 02.55 MLP PRO8)

02/25/86 01:20P SERVED JEROME J. VERLIN, ESQ.

86 FEB. 03920 CONTINUED

(ENTERED 03-12-86 02.57 ANG PROK 076)

03/17/86 03:24P APPEARANCE OF THOMAS J ZIOMEK ESQ. FOR DEFENDANT JEROME J. VERLIN FEE PAID $19.00

(ENTERED 03-18-86 10.30 MJC PRO7 013)

03/17/86 03:24P DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT WITH NEW MATTER FILED.

(ENTERED 03-18-86 10.30 MJC PRO7 006)

04/02/86 03:03P PLTFFS' RESPONSE TO DEFT'S NEW MATTER FILED

(ENTERED 04-03-86 10.30 CHZ PRO3 006)

05/15/86 10:09A INTERROGATORIES OF DEFENDANT TO PLAINTIFF WITH ANSWER FILED

(ENTERED 06-04-86 02.22 MJC PRO2 036)

07/08/86 10:10A IT IS ORDERED THAT THE DEPOSITION OF PLAINTIFF MARY ROSENTHAL NOTICE FOR & 7/15/86 SHALL NOT BE TAKEN UNTIL AT LEAST 30 DAYS AFTER SHE RETAINS COUNSEL BUT IN ANY EVENT NO LATER THAN SIX MONTHS

86 FEB. 03920 CONTINUED

FROM THE DATE SIGNED BY JUDGE FORER ON 7/2/86 NOTICE UNDER RULE 236

(ENTERED 07-08-86 02.47 MMB PROR 061)

01/29/87 10:10A ORDERED THAT THE PLF. MARY ROSENTHAL'S PETITION TO EXTEND TIME TO RETAIN COUNSEL IS GRANTED FOR A PERIOD OF 90 DAYS. NO FURTHER EXTENSION WILL BE GRANTED.

1-21-87/FORER,J. NOTICE UNDER RULE 236

(ENTERED 01-29-87 02.57 RDC PROL 061)

01/27/88 07:55A ORDER AND OPINION FILED.

UPON CONSIDERATION OF DEFENDANT JEROME J. VERLIN, ESQUIRE'S MOTION FOR SUMMARY JUDGEMENT, HIS MEMORANDUM OF LAW IN SUPPORT THEREOF AND PLAINTIFFS' RESPONSE THERETO, IT IS ORDERED AND DECREED THAT SUMMARY JUDGMENT IS ENTERED IN

86 FEB. 03920 CONTINUED

FAVOR OF DEFENDANT JEROME J. VERLIN, ESQUIRE. FILED. BY THE COURT: LEHRER, J. 1/20/88. NOTICE UNDER RULE 236.

(ENTERED 01/27/88 01.43 PJV PR01 061)

03/25/88 ORDERED AND DECREED THAT PLAINTIFFS' PETITION FOR RECONSIDERATION IS DENIED AND JUDGMENT IS HEREBY ENTERED IN FAVOR OF DEFENDANT JEROME J. VERLIN, ESQUIRE. FILED BY THE COURT: LEHRER, J. 3/18/88. NOTICE UNDER RULE 236.

(ENTERED 03-25-88 02.58 PJV PR01 061)

****

* * * E N D O F D O C K E T * * *

MARY ROSENTHAL, BERNARD L.	:	COURT OF
MILLER, YETTA MILLER	:	COMMON PLEAS
AND THE ESTATES OF SAMUEL	:	FEBRUARY TERM
SCHWARTZ AND ANN SCHWARTZ	:	1986
VS.	:	Filed 1/27/88
JEROME J. VERLIN, ESQUIRE	:	NO: 3920

OPINION

This is a Motion for Summary Judgment filed by Defendant Jerome J. Verlin, Esquire. For the reasons set forth herein, this Motion will be granted.

The instant case is a suit for attorney malpractice and aries out of the destruction of a diner by fire in 1963. As a result of this fire, the Plaintiffs, with the exception of Samuel Schwartz, who is presently represented by his estate, commenced two separate lawsuits, the first in Philadephia County and the second in Monroe County, to recover for the loss of the diner.

The action in Philadelphia on March 6, 1964 was brought against Windsor Mutual Insurance Company, Mount Joy Mutual Insurance

Company and Retailers Mutual Insurance Company. In this action, the Plaintiffs involved sought recovery of $65,000.00 plus interest.

The lawsuit in Monroe County was instigated in 1964 with the filing of a writ against the defendants American Casualty Company, Home Insurance Company, Manhattan Fire Insurance Company, Excelsior Insurance of N. York and Reliance Insurance Co. The Plaintiffs filed their Complaint in 1966, which set forth claims in assumpsit and sought recovery of $120,000.00 plus interest.

Plaintiffs first consulted Mr. Verlin on or about October, 1974 to discuss the possibility of his representation of their interests in the Philadelphia and Monroe County actions just described. Plaintiffs had at that time retained at least six other lawyers to collect insurance proceeds on the diner, but Plaintiffs had not recovered anv money to compensate them for the fire loss.

On December 3, 1975, Mr. Verlin settled the Philadelphia action for $27,021.07. On that date Mary Rosenthal, on behalf of the Plaintiffs, signed the settlement agreement for the Philadelphia County action. The terms of the agreement set forth that Plaintiffs released Mr. Verlin from all legal action.

Under the facts set forth in the Plaintiffs' Complaint, the Monroe County action was dismissed by an order on February 2, 1980 accompanied by an opinion stating that "Plaintiffs have a lack of interest in their suit." Plaintiffs allege that they were deceived by defendant on the status of the case. He allegedly told plaintiffs that a Praecipe for Trial List had been filed. Plaintiffs further allege that on February 11, 1980, Plaintiff Mary Rosenthal went to the Monroe County Court Prothonotary's Office and learned of the dismissal of the case. Basically this will be treated as a dismissal for failure to prosecute.

Under Pa. R.C.P. 1035, a Motion for Summary Judgment shall be rendered if the pleasdings, depositions, answers to interrogatories, admissions on file, and supporting affidavits show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. See, Bremmer v. Protected Home Mutual Life Insurance Co. 436 Pa. 494, 260 A.2d 785 (1970).

In the case at Bar, there is no genuine issue of fact as to Mr. Verlin's liability to Plaintiffs and Mr. Verlin's Motion for Summary Judgment shall be granted.

As to Plaintiff, the Estate of Samuel Schwartz, liability cannot be found on the part of Mr. Verlin under the facts stated in the Complaint as Samuel Schwartz was not a client of Mr. Verlin in the Philadelphia or Monroe County actions, and any duty alleged owed to Mr. Schwartz arises out of the maintenance of those two legal actions.

With reference to the other Plaintiffs, their claim of malpractice in the suits in Philadelphia County such claims must be dismissed by the operation of the applicable statutes of limitations and by operation of the signed release.

The Philadelphia County action was finally settled in 1975 but the instant case was not commenced until February 21, 1986. Under 42 Pa. C.S.A. 5524(7), a two year statute of limitations is applied to Plaintiffs' negligence count, and under 42 Pa. C.S.A. 5525(8), a four year statute of limitations applies to the contract count. Plaintiffs' claims based upon the Philadelphia County action have therefore been brought nine (9) and seven (7) years beyond the respective expirations of the statute of limitations for the tort and contract claims.

In addition, these claims are barred by operation of the release contained in the 1975 settlement agreement. Plaintiffs argue that the release has no legal effect as the

release was procured through threats to withdraw as legal counsel in the Monroe County action.

Plaintiffs, however, fail to indicate why such alleged threats should be construed as fraud in light of the fact Plaintiffs held themselves as business people allegedly sophisticated enough to protect their interests and able to obtain new counsel even had Mr. Verlin acted upon his threat to withdraw as counsel.

With regard to the claims stemming from the representation of the suit in Monroe County, such must be dismissed by operation of the bar of the statute of limitations and the doctrine of res judicata.

Plaintiffs admit in their Compaint that as of February 11, 1980 they were aware of the dismissal of their case for failure to prosecute and of the alleged deception of Mr. Verlin. The Court determines that the applicable statute of limitations period began to run as of February 11, 1980 and not as of

the date of the final disposition of Plaintiffs' appeals. Assuming that a statue of limitations period of four year applies, the time allotted Plaintiffs to bring their action would have expired on February 11, 1984, or two years prior to the date that the instant case was instituted.

In any event, the doctrine of res judicata bars Plaintiffs' claims which are related to the Monroe County action. Plaintiffs, in Philadelphia County, Civil Action No. 5420, June Term 1964, a case in which Mr. Verlin was not involved, filed a suit with identical claims against identical defendants to those involved in the Monroe County action. In November, 1972, Summary Judgement was entered in favor of the defendants against the Plaintiffs Mary Rosenthal, Bernard L. Miller, Yetta Miller and Anna Schwartz in that case. That ruling consisted of a final valid judgment. Therefore no further litigation of the issues resolved by that judgment could have proceeded in Monroe

County. Therefore, no damage could have proximately resulted from defendant's alleged negligence.

In Pennsylvania, a final, valid judgment precludes further litigation of the same issues of the same parties. Shindel v. Leedom, 350 Pa. Super. 280, 504 A.2d 353 (1986).

An appropriate order will issue.

BY THE COURT:

_____

SAMUEL M. LEHRER, J.

SUPREME COURT OF PENNSYLVANIA

Eastern District

May 2, 1989

Ms. Mary Rosenthal

c/o Kalmus

24 Chelmsford Drive

Trenton, NJ 08618

RE: Mary Rosenthal, et al.,
Petitioners v. Jerome J.
Verlin, Esquirer
NO. 646 E.D.ALLOCATUR DOCKET
1988

Dear Ms. Rosenthal:

This is to advise you that the following Order has been endorsed on the Petition for Reconsideration, filed in the above captioned matter:

April 27, 1989.

Petition denied.

Per Curiam.

Very truly yours,

MARLENE F. LACHMAN, ESQ.PROTH.

THE SUPERIOR COURT OF PENNSYLVANIA

OFFICE OF THE PROTHONOTARY

2044 ROBERT N.C. NIX, SR. FEDERAL BUILDING

NINTH AND CHESTNUT STREETS

PHILADELPHIA, PENNSYLVANIA 19107

Mary Rosenthal, Pro Se June 13, 1988

4665 Weymouth St.

Phila., Pa. 19120

Re: Mary Rosenthal, et al, Appellants v.

Jerome J. Verlin Esquire

No. 1278 Philadelphia 1988

Dear Ms. Rosenthal:

This is to advise that the following Order has been entered in the above captioned matter:

> AND NOW, this 10th day of June, 1988, the petition for reconsideration of order to dismiss appellant's appeal is denied.
>
> s/ Per Curiam"

Very truly yours,

_____

David A. Szewczak,Proth.

IN THE SUPERIOR COURT OF PENNSYLVANIA

Philadelphia Office

MARY ROSENTHAL, BERNARD L. MILLER, YETTA MILLER AND THE ESTATES OF SAMUEL SCHWARTZ AND ANNA SCHWARTZ	NO. 1278 PHILADELPHIA 1988
Appellants	(C.P. - Civil Action Phila. County 3920 Feb. 1986)

v.

JEROME J. VERLIN ESQUIRE

ORDER

AND NOW, this 25th day of May, 1988, Appellee's Motion to Dismiss the above-captioned appeal for failure to comply with Pa. R.A.P. 903(a) is Granted.

Per Curiam

MARY ROSENTHAL, BERNARD L.	:	COURT OF
MILLER, YETTA MILLER	:	COMMON PLEAS
AND THE ESTATES OF SAMUEL	:	FEBRUARY TERM
SCHWARTZ AND ANN SCHWARTZ	:	1986
VS.	:	
JEROME J. VERLIN, ESQUIRE	:	NO: 3920

ORDER

AND NOW, this 18 day of March, 1988, upon consideration of plaintiffs' Petition for Reconsideration of the Summary Judgment in Favor of Jerome Verlin, Esquire ("Petition for Reconsideration") and Response of Defendant Jerome J. Verlin, Esquire to plaintiffs' Petition for Reconsideration, it is ORDERED and DECREED that plaintiffs' Petition for Reconsideration is DENIED and judgment is hereby entered in favor of defendant Jerome J. Verlin, Esquire.

BY THE COURT

_____

Samuel M. Lehrer, J.

MARY ROSENTHAL, BERNARD L.	:	COURT OF
MILLER, YETTA MILLER	:	COMMON PLEAS
AND THE ESTATES OF SAMUEL	:	
SCHWARTZ AND ANN SCHWARTZ	:	FEBRUARY TERM
VS.	:	1986
JEROME J. VERLIN, ESQUIRE	:	NO: 3920

ORDER

AND NOW, this 20th day of January, 1988 upon consideration of defendant Jerome J. Verlin, Esquire's Motion for Summary Judgment, his Memorandum of Law in support thereof and plaintiffs' Response thereto, it is ORDERED AND DECREED that Summary Judgment is entered in favor of defendant Jerome J. Verlin, Esquire.

BY THE COURT:

Samuel M. Lehrer J.

CRIMINAL INFORMATION

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF MONROE

On the 21st day of January 1964, before Emma B. Merwin Esq. one of the Justice of the Peace in and for said County personally appeared Tpr. Stanley F. Komosinsky, Penna. State Police, who, being sworn according to law, doth despose and say that, in the Cty aforesaid, on or about the 11th day of July 1963, one Daniel Rosenthal, Pocono Lake, Tobyhanna Twshp Monroe Cty. did fraudulently obtain insurance, in his name only, with intent to defraud the actual additionalowners, namely, his wife, Mary Rosenthal, Samuel Schwartz, Anna Schwartz, Bernard L. Miller and Yetta Miller, all of Phila.; said insurance was written to cover building and contents comprising a dining room, kitchen, custard stand, snack bar and game room, all of which is in violation of Section 349, Act 284, Approved May 17, 1921 public law 682.

PHILADELPHIA BAR ASSOCIATION

LAWYER REFERRAL AND INFORMATION SERVICE

Feb 13, 1987

Mary Rosenthal

4666 Reach Street

Philadelphia, PA 19120

Re: Rosenthal, et.al. v. Verlin

Dear Ms. Rosenthal:

This will confirm our recent conversation in which I informed you that this office has exhausted its resources in locating an attorney to represent you in the above action. Robert Rosin Esq., the last attorney to whom you were referred, has indicated that he will not represent you. Consequently, I am returning your file to you.

If you have any questions, please contact me at your convenience.

Very truly yours,

Charles J. Klitsch

Staff Attorney

COHEN, VERLIN, SHERZER & PORTER

RE: BERNARD L. MILLER and YETTA MILLER; AND ANNA SCHWARTZ; and MARY ROSENTHAL vs. WINDSOR MUTUAL INSURANCE CO., et al.

GROSS AMOUNT OF RECOVERY		$27,081.67
EXPENSES:		
Legal :Costs	$ 44.60	
Register of wills	34.80	
Other A. W. Novasitis Esq.	500.00	579.40
		26,502.27
ATTORNEY FEE		9,027.22
NET FUND FOR CLIENT		$17,475.05

RECEIVED, Phila. Pa. on December 3, 1975 of COHEN, VERLIN, SHARZER and PORTER, Esquires the sum of $17.475.05 the same being in full settlement satisfaction and payment for my claim against the above named defendant, arising out of the alleged negligence of the defendant.

I hereby authorize payment of the above expenses and verify and confirm the above distribution, which was made with my/our consent and approval and do hereby acknowledge

EXPUNGED SETTLEMENT SHEET - CONTINUED

receipt of a copy of this statement of distribution, and I/we do hereby release and forever discharge the said COHEN, VERLIN, SHARZER and PORTER, their heirs, executors and administrators, of and from all manner of actions, and causes of actions, suits, covenants, contracts, agreements, claims and demands whatsoever, in law or equity especially arising from the prosecution and settlement of the above suit for damages, which against the said COHEN, VERLIN, SHARZER and PORTER, I/we ever had, now have, or which my/our heirs, executors, administrators or assigns hereafter can, shall or may have for, or by reason of any cause, matter or thing whatsoever.

Expunged Names on Verlins Papers	Signatures that Appeared:
	Mary Rosenthal
Yetta Miller	Yetta Miller
Bernard L. Miller	Bernard L. Miller

Settlement Conference

September 8, 1975

Bernard L. Miller, et al vs. Windsor Mutual Ins. Co., et al

Joseph Gerber, Attorney for Retainers Mutual Insurance Company called Judge Marshall on the day of the conference and told her that Retailers Mutual was let out of this case by order of Hirsh, J.

Plaintiffs demanded $50,000. Defendant offered $23,000. Judge recommended $35,000 as a reasonable settlement. Plaintiffs were willing to accept it. Defendant turned it down. No discovery necessary.

The major issue in the case involves whether the policy for fire insurance was cancelled when notice was admittedly received by one of 6 partners only, notice having been sent to all partners. Damages are agreed to be $65,000. Set for trial.

Judge Merna B. Marshall

Attorney I.D. No. 03706

BERNARD L. MILLER	:COURT OF COMMON PLEAS
YETTA MILLER;	NO. 2
ANNA SCHWARTZ; AND	:Filed 9/26/75
MARY ROSENTHAL	
VS.	:MARCH TERM, 1964
WINDSOR MUTUAL INS. CO.	
MT. JOY MUTUAL INS. CO.	:
and RETAILERS MUTUAL	
INSURANCE CO.	:NO. 458

ORDER OF DISCONTINUANCE

TO THE PROTHONOTARY:

Please mark the above-captioned action Settled, Discontinued and Ended, upon payment of your costs only.

ANTHONY W. NOVASITIS, JR and
JEROME J. VERLIN
Co-Counsel for Plaintiffs
By: Jerome J. Verlin

FRAUDULENT INSURANCE POLICY

Policy No.	Name of Company	Date
N15-00-48	Windsor Mount Joy Mutual Ins.	6/14/75

Rates	Amount	Extended Coverage Applies to
1.134.283	$22,500.	Frame and Stone Barn 40'X70'
.472.094	7,000.	On livestock, when death is caused by, or necessary destruction directly results from, a peril insured against, while in any building or in the open the open premises or temporary elsewhere.
.472.094	2,500.	On 1968 John Deere Tractor
.472.094	1,500.	On 1969 New Holland Hay Baler.
Total	$33,500.	

FRAUDULENT INSURANCE POLICY - CONTINUED

$33,500.00 Basis — H150048

Amount of Policy at Loss — Policy Number

6/14/74 — 6/14/77

Date Issued — Date Expires

To the Windsor-Mount Joy Mutual Insurance Company of Hamburg, Pa. At time of loss by the above indicated policy of insurance you insured Mary Rosenthal, Bernard Miller, Yetta Miller and Anna Schwartz. against loss by Fire & EC to the property described under Schedule "A" according to the terms and conditions of the said policy and all forms, endorsements, transfers and assignments attached thereto.

Time and Origin: A Fire loss occurred about the hour of 10 o'clock A.M. on the 2 day of November 1975. The cause and origin of the loss were: Sparks from tractor caught fire in hay and straw storage.

The Actual Cash Value of said property at the time of loss was	$60,000.00
The Whole Loss and Damage was	55,071.28
The Amount Claimed under the numbered policy is	$27,081.67

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

MARY ROSENTHAL

ALL NAMES FORGED — BERNARD MILLER AND YETTA MILLER

ANNA SCHWARTZ (DECEASED 4/19/72)

Supreme Court, U.S.
FILED
SEP 8 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 89-225

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

MARY ROSENTHAL, BERNARD L. MILLER, YETTA MILLER, and the ESTATES OF SAMUEL SCHWARTZ AND ANNA SCHWARTZ,

Petitioners,

v.

JEROME J. VERLIN, ESQUIRE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Thomas J. Ziomek, Esquire
1234 Market Street, 17th Floor
Philadelphia, Pennsylvania 19107
(215) 854-7076
Attorney for Respondent

OF COUNSEL:

WHITE AND WILLIAMS
1234 Market Street, 17th Floor
Philadelphia, Pennsylvania 19107
(215) 854-7000

PACKARD PRESS / LEGAL DIVISION, 1617 JFK BOULEVARD, PHILA., PA. 19103 (215) 563-9000

10P

Question Presented for Review

Did the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania err in dismissing Petitioners' Appeal from the grant of Summary Judgment for failure to comply with the Pennsylvania Rules of Appellate Procedure?

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Opinions Below

Judge Samuel Lehrer of the Philadelphia County Court of Common Pleas issued an Order and Opinion on January 20, 1988 granting Summary Judgment in favor of the respondent. The Opinion is reprinted in the Petition Appendix. The Superior Court of Pennsylvania issued an Order on May 25, 1988 dismissing the appeal from the Order granting Summary Judgment. That Order is reprinted in the Petition Appendix. The Superior Court denied the petitioners' motion for reconsideration on June 10, 1988. The Pennsylvania Supreme Court denied allowance of appeal on December 28. 1988. The Pennsylvania Supreme Court denied reconsideration on April 27, 1989. These Orders are reprinted in the Petition Appendix.

Statement of the Case

This case involves a civil claim alleging legal malpractice against the respondent filed in the Court of Common Pleas of Philadelphia County in the state of Pennsylvania. The original Complaint alleged that the respondent had improperly represented the petitioners in connection with a fire loss which occurred in 1963. The original Complaint alleged that the respondent was retained in 1974. As is set forth in the Opinion of Judge Lehrer of the Court of Common Pleas of Philadelphia County accompanying the Order of January 20, 1988, there were multiple other lawyers engaged by the Petitioners involving representation for the same loss over an extended period of time.

On January 20, 1988, Judge Lehrer granted a Motion for Summary Judgment filed by the respondent. Judge Lehrer held that there was no genuine issue of fact and that the claims were barred by the applicable statute of limitations; by reason of the doctrine of *res judicata;* and by reason of a Release executed by the

plaintiffs. No appeal was taken from that Order within 30 days as required by the Pa.R.App.P. 903.

By letter of February 19, 1988, petitioner enclosed a Petition for Reconsideration of the January 20, 1988 Order. Judge Lehrer denied the Petition for Reconsideration by Order of March 18, 1988 (Petition Appendix). On April 18, 1988 the petitioner filed a notice of appeal in the Pennsylvania Superior Court.

On May 3, 1988 respondent filed a Motion to Dismiss the Appeal for failure to comply with Pa.R.App.P. 903. On May 25, 1988, the Pennsylvania Superior Court entered an Order granting the Motion to Dismiss the Appeal (Petition Appendix). Petitioner filed a Petition for Reconsideration which was denied by the Pennsylvania Superior Court on June 10, 1988 (Petition Appendix). On July 11, 1988 petitioner filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania. On December 28, 1988 the Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal (Petition Appendix). Petitioner filed a Petition for Reconsideration in the Pennsylvania Supreme Court. The Pennsylvania Supreme Court denied the Petition for Reconsideration on April 27, 1989 (Petition Appendix).

Summary of Argument

The Petition for Writ of Certiorari should be denied because this case involves no special or important reasons for granting the petition. This matter involves the application of the Pennsylvania Rules of Appellate Procedure by the Pennsylvania Supreme and Superior Courts. There is no constitutional or federal question involved. There is no conflict with either a Federal Court or another State Court of the last resort by reason of the decision rendered by the Pennsylvania Supreme Court in this matter. This matter involves the simple and mechanical application of Rule 903 of the Pennsylvania

Rules of Appellate Procedure concerning the requirement of a timely filing of an appeal.

The original claim against the respondent was concluded by the entry of Summary Judgment in favor of the respondent. The petitioner did not file an appeal in a timely manner as required by Pa.R.App.P. 903. The Pennsylvania Superior Court dismissed the appeal for that reason. The Pennsylvania Supreme Court denied allowance of appeal from that Order.

Petitioner now seeks review by this Court. The petition is simply a repetition of scandalous, unsupported and unsupportable claims. There is no serious attempt to address the legal issues involved. Many quotations are fictitious and certainly not attributed. Indeed, the petitioner directly violates Rule 34.6 of the Rules of this Court prohibiting scandalous material.

Additionally, the petition is untimely. The Order of the Pennsylvania Supreme Court denying allowance of appeal is dated December 28, 1988. The petition was docketed in this Court on July 24, 1989.

Legal Argument

The legal issue involved here is whether the dismissal of the appeal by the Pennsylvania Superior Court and the subsequent affirmances of that decision (by reason of denial of the allowance of appeal) by the Pennsylvania Supreme Court was proper. Pursuant to Pa.R.App.P. 903 and the Pennsylvania Court decisions interpreting that Rule, there is no question but that the dismissal of the appeal was correct.

The Order granting Summary Judgment was dated January 20, 1988. Rule 903 requires the filing of an appeal within thirty (30) days of that date.

In *Leonard v. Andersen Corp.*, 300 Pa.Superior 22, 445 A.2d 1279 (1982), the Superior Court specifically addressed the issue of timely appeal and held that an appeal must be filed within 30 days from the original

Order granting Judgment in the case, and a Petition for Reconsideration will not extend that time. The Court stated

> "Timeliness of an appeal is a jurisdictional matter which can be raised by the Court *sua sponte* [citations omitted]. In general the 'notice of appeal . . . [must] be filed within 30 days after the entry of the Order from which the appeal is taken.' Pa.R.A.P. 903(a) . . . The 30 day appeal period of Rule 903 has been strictly construed. [citations omitted]. An Appellate Court 'may not enlarge the time for filing a notice of appeal' Pa.R.A.P. 105(b). The mere filing of a Petition for Reconsideration does not toll the period in which an appeal may be perfected." [citations omitted] 300 Pa.Superior at 25.

The rule of *Leonard v. Andersen* has been reaffirmed in *Hunter v. Employers Insurance of Wausau,* 347 Pa.Superior 227, 500 A.2d 490 (1985) and *Simpson v. Allstate Insurance Company,* 350 Pa.Superior 239, 504 A.2d 335 (1986)).

There is no issue of a conflict by reason of this decision with a decision of a Federal Appeals Court or another state court of last resort. Sup.Ct.R. 17. *See also, Bingler v. Johnson,* 394 U.S. 741, 747-48 (1969); *United Mine Workers of America v. Illinois State Bar,* 389 U.S. 217, 219 (1967). There is no federal question involved. *See Donaldson v. United States,* 400 U.S. 517, 522 (1971); *Department of Mental Hygiene of California v. Kirchner,* 380 U.S. 194, 197 (1965); *Howell v. Jones,* 516 F.2d 53, 56 (5th Cir. 1975), *cert. denied,* 424 U.S. 916 (1976). There is simply no reason to grant the Petition.

To the extent that the petitioner complains about the process of Summary Judgment without a jury trial, that argument is both foreclosed and incorrect. It is foreclosed because the petitioner never perfected the appeal properly. It is incorrect because the Pennsylvania

Rules specifically provide for the Summary Judgment procedure. See Pa.R.Civ.P. 1035. *See also, Bobb v. Kraybill,* 354 Pa.Super. 361, 364, 511 A.2d 1379, 1380 (1986), *allocatur denied,* 513 Pa. 633, 520 A.2d 1384 (1987); *Curry v. Thompson,* 332 Pa.Super. 364, 368, 481 A.2d 658, 659 (1984); *Bowman v. Sears, Roebuck & Co.,* 245 Pa.Super. 530, 535, 369 A.2d 754, 756 (1976); *Bremmer v. Protected Home Mutual Life Insurance Company,* 436 Pa. 494, 260 A.2d 785 (1970).

This Court has explained the favored use of Summary Judgment as a method of disposing of litigation. *Celotex v. Catrett,* 106 S.Ct. 2548 (1986); *Anderson v. Liberty Lobby, Inc.,* 106 S.Ct. 2505 (1986).

Indeed, the mere reading of this Petition, with its fictitious and scandalous allegations, presents a strong argument that Summary Judgment was absolutely appropriate here.

Conclusion

None of the considerations governing review on certiorari exist in this case. Respondent requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

Thomas J. Ziomek
1234 Market Street, 17th Floor
Philadelphia, Pennsylvania 19107
(215) 854-7076

Attorney for Respondent

OF COUNSEL:

WHITE AND WILLIAMS
1234 Market Street, 17th Floor
Philadelphia, Pennsylvania 19107
(215) 854-7000

Supreme Court, U.S.
FILED
OCT 2 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-225

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

MARY ROSENTHAL, BERNARD L. MILLER
YETTA MILLER, and the Estates of
SAMUEL SCHWARTZ & ANNA SCHWARTZ
PETITIONERS,
Acting Pro Se

VS.

JEROME J. VERLIN, ESQUIRE
RESPONDENT

REPLY TO BRIEF IN OPPOSITION

TO PETITION FOR WRIT OF CERTIORARI

MARY ROSENTHAL
Acting, Pro Se
C/O KALMUS
24 Chelmsford Drive
Trenton, N.J. 08618
(609) 883-8084

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ARGUMENT

The respondent contends that this case involves no special or important reason but this petition is special as it brings to light an extraordinary important issue in the field of law, which faces our generation today and in the future--a task which requires full cooperation among many lawmakers and disciplinarians as well. This matter involves a Constitutional matter not to be ignored, for it pertains to the rights of the common man, given no recourse in legal malpractice suits but to act pro se or do what the multitude of legal victims must succumb to--forfeit their rights and drop charges--due to extreme prejudice and discrimination in our legal society.

Due to omitted and overlooked facts in respondent's brief pursuant to Pa.R.A.P. 903 the petitioner will reiterate the law so that there will be no question but that the Pa. Court's dismissal of appeal was incorrect.

> "That decisions under R.A.P. 903 are clearly no longer valid in light of R.A.P. 1701(b)(3). An appeal is rendered inoperative if reconsideration is pending." (Pa. Appellate Ruling 903(a) Effect of Petition for Reconsideration).

The Pa. Supreme Court and the Pa. Superior Court failed to recognize the rule change amended in 1979.

An appeal from the Order of Summary Judgment was refused by the Pa. Superior Court when petitioner informed the Clerk of their intentions of filing a Petition for Reconsideration.

> "There can be no appeal until there has been a judgment of final order in the court from which the appeal is taken." (Superior Court Rules. Rules of Practice Rule 4, Subdivision a(2d.)

The petitioners' Petition for Reconsideration of the Summary Judgment Order of Jan. 20, 1988 was not enclosed in the personal letter of March 22, 1988 sent to Judge Lehrer, as stated by the respondent. The petition was hand delivered by the petitioner to the Phila. Motion Court, time stamped '88 Feb. 19 PM 4:21

- cost $12.00. In the Response of March 4, 1988 to the Petition for Reconsideration the respondent claimed that the Petition was untimely filed. Although the petitioners were never advised by the Court or respondent of Judge Lehrer's ruling, pertaining to Petition for Reconsideration, the Prothonatary Court's records were regularly checked by the petitioners for a decision so that a timely filed appeal would be made if needed.

All cases cited in the respondents Brief in Opposition to Petition For Writ of Certiorari referring to the old Ruling of Rule 903(a) are foreclosed to this action due to the New Ruling.

The Trial Court committed prejudicial abuse of its discretion in awarding the Summary Judgment in favor of the respondant as its means of disposing the litigation, while refusing the Constitutional rights of the petitioners to due process of the law, to a trial by jury or hearing. The personal letter of March 22, 1988 by the petitioner to the

Trial Judge, requesting a hearing and a lie detector test to prove to the court that the facts and records submitted to the Trial Court were of the utmost importance in the Court's rendering their final decision. The respondent without any justification was awarded the Summary Judgment.

> Summary Judgment should be entered only in very clear cases." (Shaffer v. Larzelere 189 A2d 267-410 Pa. 402 Pa. Com Pl. 1963)
>
> "All doubts must be resolved against a Summary Judgment, and such a judgment can only be entered in a clear case." (Shoemaker v. McKinney 30 Northumb L.J.14 Pa. Com Pl. 1958)

The respondent accuses the petitioners of violating Rule 34.6 of this Court, prohibiting scandalous material. All materials submitted, exploiting the truth of the matters and linking the respondent's malpractice behavior, should not be considered scandalous but a manner of seeking justice according to the annals of the Pa. Code of Professional Liability, which states:

> "One generalization can be safely made, the court usually holds the client responsible for the acts and omissions of his agent offering the client as solace, the suggestion that he sue his attorney for mal-practice."

The phrase "the multiple other lawyers engaged by the petitioners" an issue raised by the respondent in this court and constantly flaunted by the respondent, is a form of art developed by the respondent to cover a ruthless endeavor to humiliate and incite prejudice, as punishment to the petitioners for initiating malpractice charges. "The multiple other lawyers engaged by the petitioners" became involved in a conspiracy engineered by Daniel Rosenthal and his attorney, with a written proposition which stated, in part--

> "I strongly urge that the question as to the ultimate division of proceeds among the Rosenthals, Millers and Schwartzs be postponed until there is a recovery. However it should be made clear to the clients that after a recovery, council will receive their fees and costs"----"the suit in Monroe County should be withdrawn"----"the proper cause of action should be continued in Phila."

The petitioners unaware of the letter, when slyly approached by "the multiple other lawyers", on the subject of withdrawing, from the Monroe County action, refused their suggestion unless a detailed Agreement with Daniel Rosenthal as to the disposition of the proceeds of the suit in Phila., detailed enough to completely determine in advance the rights of the parties, if the suit against the insurance companies was successful. The agreement was never achieved. The respondent had full knowledge of all prior attorneys before being retained.

The respondent fully cognizant of this Court's Jurisdiction on Appeals deliberately and maliciously advanced the claim that the Petition with this Court was untimely filed.

CONCLUSION

The respondent plays his game well in a field for obstructing eyes with words that masquerade as things--without a checkup, and has submitted no justifiable defense.

The Petition for Writ of Certiorari should be Granted so that the wrongs, far to long, can be made right and that Justice will finally be served.